



MM 97-182  
Department of Strategic Planning and Growth Management  
**Transportation Planning Division**  
115 S. Andrews Avenue, Room 329H  
Fort Lauderdale, FL 33301  
(954) 357-6608 • FAX 357-6228

October 29, 1997

RECEIVED

OCT 4 1997

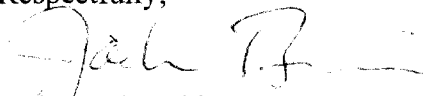
Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Notice of Proposed Rulemaking: Preemption of State and Local Zoning and Land Use  
Restrictions on the Siting, Placement and Construction of Broadcast Station Transmission  
Facilities

Dear Secretary Caton:

The Technical Coordinating Committee of the Broward County Metropolitan Planning  
Organization has voted to support the position of the Florida Department of Transportation as  
stated in the letter to you from William J. Ashbaker, State Aviation Manager, dated October 21,  
1997. This is also an action item on the agenda for the MPO on November 13, 1997.

Respectfully,

  
Jack Burrie, Chief  
Urban Transit Planning  
Broward County Metropolitan Planning Organization

cc: William J. Ashbaker, P.E.

No. of Copies rec'd 044  
List ABCDE

**RECEIVED**  
**1 4 1997**  
**Mail Station 46**  
**(850)414-4500**

**October 21, 1997**

Mr. William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Notice of Proposed Rule Making; MM Docket No. 97-182  
In the Matter of:  
Preemption of State and Local Zoning and Land Use Restrictions on the Siting,  
Placement and Construction of Broadcast Station Transmission Facilities

Dear Secretary Caton:

The Florida Department of Transportation strongly objects to the preemption of this state's authority to regulate the siting, placement or construction of any structure including broadcast station transmission facilities, that penetrate the navigable airspace necessary for safe and efficient use of the state's public aviation transportation system.

The Florida legislature has long recognized that a viable system of public aviation facilities and the airspace necessary to efficiently operate them is of vital importance to our state's economy. Consequently, our legislature enacted state laws allowing funding of aviation system capacity improvements. In the past five years alone, the State of Florida has invested nearly \$430 million as its share to preserve and expand the state aviation system.

In order to protect our investment, Florida also enacted comprehensive land use planning and aviation compatible land use legislation that specifically requires controls for structure heights and land uses that are incompatible with normal aviation operations or that jeopardize the public's health, safety or welfare. Enforcement responsibility is shared by the Florida Department of Transportation and local governments under adopted airport zoning ordinances and comprehensive land use plans. The purpose of these statutory controls is to preserve the safe, efficient use of the state's aviation transportation system and to protect our substantial investment of federal, state and local public funds.

Further, the Federal Aviation Administration (FAA) requires protection of the federal government's invested public funds. The sponsors of airports developed by or improved with federal funds are obligated to prevent obstructions in the aerial

Mr. William F. Caton  
October 21, 1997  
Page Two

approaches to the airport. Obstructions are as defined in Federal Aviation Regulations(FAR), Part 77, Objects Affecting Navigable Airspace. For grants to airports acquired under P.L. 80-289, amending The Surplus Property Act of 1944, assurances are required that actions including zoning will be taken to restrict land uses in the vicinity of airports to uses compatible with normal airport operation. Under provisions of the Airport and Airway Safety and Capacity Expansion Act of 1987(P.L. 100-223) and earlier federal airport improvement funding programs, airports must make the obligation to prevention obstructions in writing as a condition of fund grants. The majority of Florida's 103 publicly owned airports fall in these categories.

FAR, Part 77, requires construction notification for proposed structures and establishes height standards above which objects would be obstructions to air navigation. It provides the FAA authority to determine the impact of proposed structures, including broadcast station transmission facilities, on aeronautical operations. The Part does not grant the FAA authority to permit or deny construction of any object nor does it provide the FAA any regulatory control of structure height, location or use. While the FAA controls and regulates aeronautical operations, it has no regulatory authority to protect airports, airspace or flight operations from structures that penetrate navigable airspace, would impact flight operations or would interfere with the safe or efficient use of aviation facilities. This is a specifically defined responsibility of state and local government. In Florida, this responsibility is actively exercised through the statutory controls protecting the state public aviation transportation system enacted by the legislature.

Preemption of Florida's authority to regulate the siting, placement or construction of broadcast station transmission facilities that penetrate navigable airspace would adversely impact the state's public aviation transportation system in two ways. First, an object that exceeds obstruction standards can affect the safety of flight operations as well as persons in, on or near the object should an aircraft collide with it. Second, an object that penetrates navigable airspace, particularly airport terminal area airspace, will decrease the area aircraft have available for taking off, maneuvering or landing. In turn, this requires flight restrictions and operations or procedures to be modified to accommodate the object safely. These type accommodations limit and degrade aviation operating capabilities resulting in decreased airport and system capacities.

Thus, an object that penetrates en route or airport terminal area airspace jeopardizes the investment of public funds in our aviation transportation system. Where these public funds include federal grants, preemption of the local government zoning control by the Federal Communications Commission(FCC) could place the local government in default of its grant assurance required by the FAA.

Mr. William F. Caton  
October 21, 1997  
Page Three

We wish to respectfully point out that the mandated role of the FCC is management of a national system of communications in its wide variety of applications. This role does

not equip the Commission or its staff with the aeronautical expertise to evaluate the impact a proposed structure will have on existing or planned aeronautical activity. Florida's airspace protection and compatible land use statutes require the Department of Transportation to be proficient in this area of expertise, use it in executing its permit authority and assist local governments on request.

We recognize the importance of a viable radio and television broadcast system and the public interest these media services serve on a national as well as international basis. We also recognize that these services are, in the main, provided by private, venture capital organizations in a highly competitive and profitable market arena. The most lucrative broadcast markets are those with the greatest population densities that also require the more extensive aviation transportation system capabilities and thus create conflicts between the two systems needs. When these type conflicts occur, we do not believe it was the intent of the Congress that they be resolved at the expense of public investment in its transportation infrastructure or the safety of the system.

The safety of the state's public transportation system is the paramount concern of the Florida Department of Transportation.

Sincerely,

William J. Ashbaker, P.E.  
State Aviation Manager

WJA/ajr

cc: Aircraft Owners and Pilots Association  
Florida Airport Managers Association  
Florida League of Cities  
Florida Association of Counties  
National Association of State Aviation Officials